

Tennessee Board of Pharmacy
May 16 - 17, 2006

**TENNESSEE BOARD OF PHARMACY
MAY 16 - 17, 2006
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Julie Frazier, President
Sheila Mitchell, Vice President
Robert Mitchell, Member
Monica Franklin, Consumer Member*
Todd Bess, Member
Bettie Wilson, Member
Reggie Dilliard, Member

STAFF PRESENT:

Terry Cannada, Acting Interim Executive Director
Alison Z. Cleaves, Chief Legal Counsel
Martha Agee, Board Administrator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, May 16, 2006, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CDT, by Dr. Julie Frazier, President. President Frazier noted for the record that Mrs. Monica Franklin* arrived at 9:05 a.m., CDT. President Frazier noted the Interim Executive Director, Dr. Terry Grinder would not be in attendance due to the death of his father-in-law. Dr. Frazier stated on behalf of the Board and office staff, we send our condolences to Dr. Grinder and his family. Dr. Terry Cannada assumed the Acting Interim Executive Director duties.

APPROVAL OF THE MINUTES

The **minutes of the January 17 - 18, 2006** board meeting were presented and reviewed by the Board. Dr. Todd Bess noted on page one (1), Dr. Steven Pishao is a pediatric resident with the Tennessee Health Interdisciplinary Program. Dr. Monica Franklin motioned to **approve the minutes as amended**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

The **minutes of the March 7 - 8, 2006** board meeting were presented and reviewed by the Board. Dr. Bettie Wilson motioned to **accept** the minutes, seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

**CHARLES CUTHBERT, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
FRANKLIN, TN**

Dr. Charles Cuthbert appeared before the board along with TPRN advocate, Dr. Morris Haddox, to request the reinstatement of his pharmacist license. Acting Interim Executive Director, Dr. Terry Cannada advised the

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Board in January, 2006, Dr. Cuthbert entered into a Consent Order for the Revocation of his license due to chemical dependency. Dr. Cuthbert noted in 1999 he underwent two (2) knee surgeries and was prescribed Hydrocodone. In April, 2005, Dr. Cuthbert had another surgery, developed a staph infection and started diverting controlled substances. On November 13, 2005, Dr. Cuthbert stated he contacted his supervisor regarding his actions and he was advised to contact TPRN. Dr. Morris Haddox, TPRN advocate, informed the Board Dr. Cuthbert sought treatment at Cornerstone and successfully completed the program on February 7, 2006. Dr. Haddox noted Dr. Cuthbert has signed a contract with TPRN and has completed the 90/90 meetings. Dr. Cuthbert's wife is supportive in his recovery. Dr. Cuthbert noted there were no criminal charges filed by the pharmacy. After board discussion, Dr. Todd Bess motioned:

1. Respondent does hereby agree to the reinstatement of license number **#22603** with the following probationary conditions. Said probation shall remain in effect for a **period of five (5) years**, from **May 16, 2006 to May 16, 2011**.
 - a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
 - b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Tony Ross, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
 - c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
 - d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
 - e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
 - f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the

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presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) **Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

**STUART B. LESSENBERRY, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
CLARKSVILLE, TN**

Dr. Stuart Lessenberry appeared before the Board to request the reinstatement of his pharmacist license. Advocating on his behalf were Dr. Baeteena Black, Executive Director for the Tennessee Pharmacist Association; Dr. Mike Matheny, Dr. Cliff Weiss and Dr. Rusty Shepherd with the Tennessee Pharmacist Recovery Network. Acting Interim Executive Director, Dr. Terry Cannada advised the Board in May, 2005, Dr. Lessenberry's license was suspended due to being chemical dependent. Dr. Lessenberry stated he recalled

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stealing candy cigarettes at an early age. Dr. Lessenberry stated he stated he began to take Ambien to help him sleep. Dr. Lessenberry noted his thought process was that diverting was not stealing, as stealing would be to take the entire bottle. Dr. Lessenberry stated around April, 2004, he began diverting and forging prescriptions for Stadol. In February, 2005, Dr. Lessenberry admitted to his brother that he needed help and contacted Dr. Black, who assisted him in contacting the TPRN. Dr. Lessenberry sought treatment as an in-patient at Cornerstone and then transferred as an out-patient to a half-way house. Dr. Mike Matheny, TPRN advocate, noted Dr. Lessenberry started working the twelve step program after attending Cornerstone, and is compliant with the TPRN recommendations. Dr. Lessenberry stated the program has helped him to recognize things in a different perspective and he has a support group he can contact if an issue arises. Dr. Cliff Weiss stated Dr. Lessenberry has the steps to achieve his own destiny. Dr. Weiss mentioned that TPRN is unsure if the Federal government will bring charges against Dr. Lessenberry since it has been fifteen (15) months since the diversion of drugs took place at Fort Campbell, Kentucky. After board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number **#8274** with the following probationary conditions. Said probation shall remain in effect for a **period of five (5) years**, from **May 16, 2006 to May 16, 2011**.

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **David Boles, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of

treatment;

- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) **Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

President Julie Frazier commended Dr. Cliff Weiss and the TPRN advocates for their commitment to the profession.

CONSENT ORDERS

REVOCATION OF LICENSE

SARA DAVIS, DPH
704 Phillip Avenue
Knoxville, TN 37920

Mrs. Alison Cleaves, chief legal counsel, presented a Consent Order for the Revocation of Dr. Sara Davis' license due to chemical dependency. Dr. Sheila Mitchell motioned to **accept** the Consent Order for Revocation; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

REINSTATEMENT OF LICENSES

STEPHEN BARRETT, DPH
1124 Weaver Pike
Bristol, TN 37620

JAMES KING, DPH
10428-B Victoria Drive
Knoxville, TN 37922

Chief legal counsel, Mrs. Alison Cleaves, presented the Consent Orders for Reinstatement of Licenses for Dr. Stephen Barrett and Dr. James King. Mrs. Monica Franklin motioned to **accept** the Consent Orders for Reinstatement; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

UNPROFESSIONAL CONDUCT

MARTIN PIN, DPH
925 Parrish Road
Knoxville, TN 37923

Mrs. Alison Cleaves, chief legal counsel for Regulatory Boards, presented a Consent Order whereas Dr. Martin Pin was in violation of Rule 1140-3-.01 (1) (a) relevant to failure to provide patient counseling that resulted in the patient receiving a misfilled prescription. Dr. Pin was assessed a civil penalty of \$250. Dr. Reggie motioned to **accept** the Consent Order; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

STATE OF TENNESSEE AUDIT COMMITTEE ACT OF 2005

Mrs. Alison Cleaves, chief legal counsel, advised the Board in November, 2005, Dr. Reggie Dilliard received a letter from the Comptroller's Office relative to this Act. Mrs. Cleaves filed for an exemption of the Charter and the matter is still pending. The Department is establishing a Charter for all of the Boards involved, which is due by June 30, 2006. Dr. Sheila Mitchell motioned to **approve** the Charter; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

Tennessee State Board of Pharmacy Audit Committee Charter

Adopted May 16-17, 2006

I. Mission Statement

This Charter specifies the scope of the Audit Committee's (the "Committee") responsibilities, and how it carries out those responsibilities, including the structure, processes, and membership requirements. The primary function of the Committee is to assist the Tennessee Board of Pharmacy (the "Board") in fulfilling its oversight responsibilities by reviewing and reporting upon: the financial reports and other financial information provided by the Board to any governmental body or the public; the Board's systems of internal and external controls regarding finance, accounting, legal compliance and ethics that management and the Board have established; and the Board's auditing, accounting and financial reporting processes in general. Consistent with this function, the Committee should encourage continuous improvement of, and should foster adherence to, the Board's financial policies, procedures and practices at all levels. The Committee's primary duties and responsibilities are to:

- Serve as an independent and objective party to monitor the Board's financial reporting process and internal control systems.
- Provide an open avenue of communication among the auditors, staff, and the Board.
- Oversee a risk assessment of the Board's activities, policies and procedures.

II. Structure and Membership Requirements

The Committee shall be comprised of three or more board members as determined by the Board, each of whom shall be "independent" board members, and free from any relationship that, in the opinion of the Board, would interfere with the exercise of his or her independent judgment as a member of the Committee.

All members of the Committee must be able to read and understand fundamental financial statements, including a balance sheet, income statement, and cash flow statement. In addition, at least one member should have past employment experience in finance or accounting, professional certification in accounting, or other comparable experience or background resulting in the individual's financial sophistication, including being or having been a chief executive, chief financial, or other senior officer with financial oversight responsibilities.

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The members of the Committee shall be elected by the Board annually and shall serve until their successors shall be duly elected and qualified. Unless a chairman is elected by the full Board, the members of the Committee may designate a chairman by majority vote of the full Committee membership.

III. Meetings

As part of its job to foster open communication, the Committee must meet at least annually with management and the auditors in separate executive sessions to discuss any matters that the Committee or management believes should be discussed privately. In addition, the Committee or at least its chairman should meet with management quarterly to review the Board's financial statements consistent with Section IV.6. below. The committee should meet with the auditors as needed.

IV. Processes

To fulfill its responsibilities and duties the Committee shall:

Documents/Reports Review; General Provisions

1. Obtain the Board members' approval of this Charter.
2. Review and reassess the Charter's adequacy periodically, but at least annually, as conditions dictate.
3. Review the Board's annual reports or other financial information submitted to any governmental body, or the public, including any certification, report, opinion, or review rendered by any independent auditors.
4. Review and approve in advance any proposed related party transactions or potential conflicts of interest.
5. Maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board. The Committee will also record its summaries of recommendations to the Board in written form that will be incorporated as part of the minutes of the Board meeting at which those recommendations are present.
6. Review, approve and monitor the Board's code of ethics for staff and board members.
7. As appropriate, obtain advice and assistance from outside legal, accounting or other advisors.
8. Establish procedures for receiving, retaining and treating complaints received by the Board regarding accounting, internal accounting controls or auditing matters and procedures for the confidential, anonymous submission by staff of concerns regarding questionable accounting or auditing matters.

Financial Reporting Processes

9. Review on a continuing basis the adequacy of the Board's system of internal controls, including meeting periodically with the Board's management and the auditors to review the adequacy of such controls.

Process Improvement

10. Following completion of the audit, review separately with both management and the auditors any significant difficulties encountered during the course of the audit, including any restrictions on the scope of work or access to required information.
11. Review any significant disagreement among management and the auditors.
12. Review with the auditors and management the extent to which changes or improvements in financial or accounting practices, as approved by the Committee, have been implemented. (This

review should be conducted at an appropriate time subsequent to implementation of changes or improvements, as decided by the Committee.)

Ethical and Legal Compliance

13. Establish, review and update periodically a Code of Ethical Conduct and ensure that management has established a system to enforce this Code.
14. Develop a formal process for assessing the risk of fraud at the agency, including documentation of the results of the assessments and assuring that internal controls are in place to adequately mitigate those risks.
15. Immediately inform the Comptroller of the Treasury's Office when fraud is detected.
16. Review management's monitoring of the Board's compliance with the organization's Ethical Code, and ensure that management has the proper review system in place to ensure that Board's financial statements, reports and other financial information disseminated to governmental organizations, and the public satisfy legal requirements.

17. Perform any other activities consistent with this Charter, the Board's Rules and governing law, as the Committee or the Board deems necessary or appropriate. If necessary, initiate special investigations, and if appropriate, hire special counsel or experts to assist the Committee.

CHANNEL WREG

Chief legal counsel, Mrs. Alison Cleaves, stated she received a public records request from WREG for specific Consent Orders on pharmacists who had been disciplined in the West Tennessee area. When WREG posted the disciplinary actions on their website, the actions were all listed for chemical addiction. Dr. Todd Bess noted the Board did not categorize the disciplinary actions as reported by WREG. For the record, the Board issued a Consent Order for Dr. Edvena Noel for being in violation of T.C.A. §63-10-506 (a) which states in pertinent part as follows:

- (a) Except as otherwise provided in parts 4 - 6 of this chapter, it is unlawful for any individual to engage in the practice of pharmacy unless currently licensed.....

REQUEST FOR APPROVAL OF RECIPROCITY APPLICATION

**DUAINE LAMOUNT LEWIS, DPH
SOUTHFIELD, MI**

Mrs. Alison Cleaves, chief legal counsel, noted Dr. Duaine Lewis had previous disciplinary action taken against his license by the Missouri Board of Pharmacy and he has submitted a reciprocal application for licensure in the State of Tennessee. Dr. Todd Bess motioned **the Board wants considerable more information about his licensure with the Missouri Board of Pharmacy and how has he been able to use the license to practice.** Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

REQUEST FOR APPROVAL OF TECHNICIAN REGISTRATION

**DANIEL WANN
HERMITAGE, TN**

Mrs. Alison Cleaves, chief legal counsel, presented a request for approval of Mr. Daniel Wann's technician registration relevant to a DUI charge he pled guilty to on April 6, 2006 in the General Sessions Court of Rutherford County, Tennessee. The offense took place on November 12, 2005. Dr. Sheila Mitchell motioned to **deny** the request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

COMPLAINTS

1. Case No.: L06-PHR-RBS-200600726

Complainant alleges that her prescription for Phentermine 37.5mg was erroneously filled with Phenergan. Complainant indicates that she took the incorrect medication once a day for approximately twenty (20) days and experienced lethargy. Complainant also indicates that she was shorted approximately twenty (20) pills of Kadian; her prescription was for sixty (60) pills. Complainant called the pharmacist and notified him of the shortage and the pharmacist stated that he gave the Complainant the correct amount of Kadian. Complainant further alleges that as a result of being shorted the Kadian, she began to experience withdrawal symptoms. Complainant also claims that the pharmacist was rude to her when she brought the incidents to his attention.

Respondent denies the allegations. Respondent states that that he did inspect the bottle and it was labeled Phentermine, but contained Promethazine and that since the patient had Phentermine before and she should have noticed if there was a misfill before a month passed. Respondent questions why the Complainant waited until her next trip to the pharmacy to complaint about the alleged misfill. Respondent also states that the two (2) drugs are not stocked closely together, every controlled substance prescription double counted and then checked by the pharmacist in charge, and that there was not quantity shortage on Schedule II controlled substances. Technician also responded and stated that all controlled substances are double counted.

Prior complaints:
Pharmacy: None
Pharmacist: None

Recommendation: Dismiss

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

2. Case No.: L06-PHR-RBS-200601044

Complainant alleges that the Respondent, pharmacy technician, was terminated for theft and diversion of controlled substances from the pharmacy. The Respondent admitted to this conduct in an interview with Loss Prevention.

Recommendation: Consent Order for Revocation (Authorize Formal Hearing)

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

3. Case No.: L06-PHR-RBS-200601585

During a routine compliance inspection, investigator noticed that the pharmacy had been closed for quite some time. Investigator contacted the owner who stated that she wished to close the pharmacy because she was fearful for her own safety and her patients' safety, but would not elaborate. Respondent also stated that there were gypsies that that may be stealing, vandalizing and tapping her phones. Investigator assisted with helping the Respondent close down the pharmacy, which was requested by the Respondent, by sending the medications back to the wholesaler and sending the open bottles back for destruction.

Recommendation: Formal Hearing (Consent Order for Revocation)

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

4. Case No.: L06-PHR-RBS-200601252

Complainant alleges that the Respondent, pharmacist was rude to her when she purchased a decongestant containing Pseudoephedrine. While purchasing, pharmacist took down all of the Complainant's information, including her address, date of birth, expiration, etc. After Complainant left the store, she was disturbed that the pharmacist took down all of that information and thought it may lead to identity theft problems. Complainant then returned to the store and requested that all of her non-required information be removed from the log. Complainant stated that the pharmacist argued with her, but then removed the information, but then highlighted her name so that Complainant may no longer purchase these non-prescription drugs from this pharmacy.

Prior complaints:

DPh: None

Pharmacy: None

Recommendation: Dismiss

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

5. Case No.: L06-PHR-RBS-200600384

Complainant alleges that the pharmacy mixed up his two (2) prescriptions - one (1) for Oxycodone HCL ER 80 mg and the other was for Oxycodone HCL 30mg tablet IR. Complainant alleges that he was given the correct medications, but that they were in the wrong container or the wrong label was put on the bottles. Complainant indicates that the hospital verified with the pharmacy that they labeled the bottles incorrectly. Complainant also alleges that he consumed the incorrect medication which failed to control his pain.

Respondent denies the allegation that the bottles were mislabeled and states that this complaint was the first that he had ever heard of the allegations. The Respondent could not verify or rebut the allegation that the incorrect medication had been consumed by the patient. Respondent also indicated that periodically, he and his staff hold meetings to improve quality control and issues such as work flow and accuracy scans to prevent dispensing errors.

Prior complaints:

Pharmacy: None

DPh: None

Recommendation: Dismiss

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Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

6. Case No.: L05-PHR-RBS-200503821

Respondent, pharmacist was indicted on five (5) counts of unlawfully, knowingly and intentionally distributing controlled substances from the pharmacy where he was employed (theft and diversion).

Prior complaints:

3/24/92- Probation with the Board for chemical dependency; January, 2000- License revoked for chemical dependency; March, 2000 – License reinstated with 10 years probation.

Recommendation: Formal Hearing (Consent Order for Revocation)

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

7. Case No.: L05-PHR-RBS-200503805

Complainant alleges that her prescription for Wellbutrin 100mg was misfilled with the sustained release version of the drug. Complainant also claims that this is the fourth time that this pharmacy has misfilled her prescription. Respondent, pharmacist admitted the error. Respondent states that the Complainant contacted her when she left the pharmacy indicating that she had the incorrect medication. Respondent told the Complainant not to take the incorrect medication and asked her to come into the pharmacy and she would give her the correct medication; Complainant came in and did get the correct medication. These are refilled prescriptions that do not require patient counseling. Statement from the technician was obtained stating that she recalls another time in which a different brand was given and then changed and another technician recalled the patient saying that the pharmacy had made the same mistake again.

Prior complaints:

Recommendation: Letter of Warning.

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

Dr. Julie Frazier noted **to state in the Letter of Warning to separate the two (2) drugs on the shelves.**

8. Case No.: L06-PHR-RBS-200500696

During a routine periodic compliance inspection conducted on February 23, 2005, investigator noted a violation of the pharmacy to pharmacy technician ratio. Investigator noted that there were four (4) technicians performing the following tasks: counting and pouring medications into dispensing container, retrieving drugs from stock, entering information and prescription orders into the information system, and placing labels on dispensing containers. After showing the PIC the ratio rule, he had one (1) of the technicians work in the front of the store.

Prior complaints:

Recommendation: Consent Order with \$250.00 civil penalty & require the pharmacy to provide proof an in-service addressing the problem.

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Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

9. Case No.: L06-PHR-RBS-200504316

Complaint provides that there are shortages of Alprazolam and Hydrocodone found at the pharmacy where the Respondent is employed as a pharmacist. Respondent has not admitted to being the cause of the shortages. Investigation revealed that there was a shortage of approximately 1,865 tablets of Alprazolam 1mg, 4,493 tablets of various strengths of Hydrocodone/APAP, 65 pints or over eight (8) gallons of Hydrocodone Bitartrate with GG liquid. Investigator also obtained an affidavit from one (1) of the technicians stating that on several occasions, she has seen the Respondent consume Hydrocodone cough syrup in the pharmacy and that she has also observed the Respondent having slurred speech and appearing dazed. Investigator also found that in September, 2004, after the Respondent was involved in an auto accident, Respondent was taken to a local hospital and a toxicology screen revealed that the Respondent was positive for Phentermine, when there were no prescriptions for Phentermine in the Respondent's patient profile. On June 22, 2005, the Respondent was charged with motor vehicle theft for which the Respondent paid restitution.

Prior complaints:

DPh: 2/2000, pharmacy open without DPh present, CO for \$250.00 civil penalty; 3/2000, inventory discrepancies, LOW.

Recommendation: Formal Hearing (Consent Order for Revocation)

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

10. Case No.: L06-PHR-RBS-200600215

Complainant alleges that the her prescription for Seroquel 100mg for her mother was filled with Seroquel 200mg; the label on the bottle stated 100mg. Complainant then brought the incorrect dosage back to the pharmacy and obtained the 100mg tablets. Complainant alleges that she spoke to one of the pharmacists and asked him if taking the 200mg pills would do anything to her mother for thirty (30) days and then go back to the 100mg and pharmacist allegedly said that he did not think so, but she could bring the incorrect pills back if she wanted to. Complainant also alleges that this was not the first time that the pharmacy had given her mother medication that was not prescribed to her.

Respondent (PIC) admitted the error and denies any knowledge of any other errors. Respondent (PIC) states that since this was a refill prescription, he did not counsel. Other pharmacist also denies telling the patient that it was all right to take the medication with the incorrect strength. PIC states that they keep internal logs on errors to prevent future errors.

Prior complaints:

Recommendation: Letter of Warning about the misfill and the obligation to offer counseling on a refill

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

11. Case No.: L06-PHR-RBS-200600256

Complainant alleges that the Respondent pharmacy technician was terminated from her employment for theft of controlled substances and discharged from a treatment facility. Police report indicated that the Respondent's husband was pulled over by the police and they found in the husband's car a bottle with no label on it and approximately twelve (12) Xanax in it; husband stated that the pills must be his wife's. Respondent stated that

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the pills were hers from an old prescription and that she took the label off of the bottle because her husband has an aversion to her taking the medication. Investigator obtained a statement from the Respondent's physician stating that she did not prescribe the Respondent Xanax. DEA 106 form shows a loss of Alprazolam, Xanax, Lortab, Vicodin, Phentermine and Tussionex.

Recommendation: Formal Hearing (CO for Revocation)

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

12. Case No.: L06-PHR-RBS-200600214

Complainant alleges that she was shorted her five (5) tablets when the pharmacist filled her prescription for Coumadin and that she had a missing prescription for Toprol. Respondent, pharmacist, states that the patient's Coumadin prescription was written for thirty (30) tablets, one-half (1/2) tablet daily. The patient's insurance pays for thirty (30) days only, so the patient received fifteen (15) tablets, which is a thirty (30) day supply. In terms of the missing prescription, prescription for Toprol was not in the patient's bag; however, this was not brought to the pharmacy's attention until twenty-four (24) days after it had been left out of the bag. But, the patient also stated that she had a tablet for each of the twenty-four (24) days and she still had six (6) tablets left.

Prior complaints:

Recommendation: Dismiss

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

13. Case No.: L06-PHR-RBS-200600210

During a routine compliance inspection performed on January 1, 2006, investigator noted that the Respondent, pharmacist was practicing pharmacy with a license that was expired for thirty-five (35) days. Respondent indicated to investigator that he let his license lapse because he did not notify the Board office of his change in address and therefore failed to receive his renewal notice.

Prior complaints:

Recommendation: Consent Order with \$100.00 civil penalty for practicing pharmacy with an expired license and a Letter of Warning for failing to notify us of a change of address.

Dr. Sheila Mitchell motioned to **issue a Letter of Instruction**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

14. Case No.: L06-PHR-RBS-200600062

Complainant alleges that he received the generic when the brand name was authorized for his prescription for Coumadin. Investigator states that the prescription was a verbal order and the person dictating the order did not indicate anything about the brand name being medically necessary, so that prescription was filled with Warfarin.

Recommendation: Dismiss

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Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

15. Case No.: L06-PHR-RBS-200601798

Complainant alleges that the Respondent's employment was terminated for theft and diversion of controlled substances; Respondent is a technician. CCTV tape showed the Respondent placing a bottle of Hydrocodone in her pocket from the shelf and later, upon questioning by loss prevention, the Respondent admitted to the theft and stated that she and her boyfriend sold the tablets and used the money to pay his child support.

Recommendation: Formal Hearing (Consent Order for Revocation)

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

16. Case No.: L06-PHR-RBS-200601785

Complainant alleges that the Respondent's employment was terminated from the pharmacy where she was employed as a technician for theft and diversion of controlled substances. Respondent admitted to loss prevention that she has been taking full bottles of Hydrocodone over the course of the last six (6) to twelve (12) months. She admitted to taking approximately 10,400 Hydrocodone tablets over the last three (3) years. Respondent stated that she took the Hydrocodone to her boyfriend who then sold it to others.

Recommendation: Formal Hearing (Consent Order for Revocation)

Dr. Todd Bess motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

17. Case No.: L06-PHR-RBS-200601762

Complainant alleges that the Respondent, technician, was terminated for theft of controlled substances. Respondent admitted to taking prescriptions provided to them by the pharmacist using multiple doctors and DEA numbers that were contained in the prescription profiles.

Recommendation: Formal Hearing (Consent Order for Revocation)

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

18. Case No.: L06-PHR-RBS-200601761

Complainant alleges that the Respondent, technician, was terminated for theft of controlled substances. Respondent admitted to taking prescriptions provided to them by the pharmacist using multiple doctors and DEA numbers that were contained in the prescription profiles.

Recommendation: Formal Hearing (Consent Order for Revocation)

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Todd Bess. All were in favor and the motion carried.

19. Case No.: L06-PHR-RBS-200601760

Complainant alleges that the Respondent, pharmacist forged many prescriptions over a period of six (6) years. The forged prescriptions were not only for the Respondent but for the technicians mentioned in numbers 17 and 18. Respondent also admitted to the diversion of small amounts of controlled substances.

Recommendation: Formal Hearing (Consent Order for Revocation)

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

20. Case No.: L06-PHR-RBS-200600347

Complainant alleges that the Respondent misfilled her child's prescription for Singulair 4mg with Singulair 10mg. Complainant contacted the pharmacy and the pharmacist informed her to return the incorrect medication to the pharmacy to correct the problem.

Respondent admits the error and states that it occurred because the pharmacy label was placed over the manufacturer's label and that all strengths of the drug are in the same size bottle. The counseling log was signed by the Complainant. As a result of the incident, a new policy and procedures has been instituted which provides that If a manufacturer's bottle is used in the dispensing of a prescription, then the prescription label is to be applied to the bottle in such a manner that will allow verification of the medication in the bottle without removing the pharmacy label. If that cannot be accomplished, then the manufacturer's bottle will not be used in dispensing the prescription."

Recommendation: Letter of Warning

Dr. Todd Bess motioned to **accept counsel's recommendation and to celebrate the process change the pharmacy is making**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

21. Case No.: L06-PHR-RBS-200600345

Complainant, veterinarian, alleges that the pharmacy filled a prescription for heartworm medication when he did not give authorization. Respondent provided a transcript of a telephone conversation with the Respondent pharmacy and an employee of the Complainant's facility. When the technician at the Respondent pharmacy called to verify the orders made by the pet owners, the Complainant's employee gave the pharmacy authorization to fill the prescription and use the Complainant's name.

Recommendation: Dismiss

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

**KEVIN STAPF, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
POWELL, TN**

Dr. Kevin Stapf appeared before the Board to request the reinstatement of his pharmacist license. Advocating on his behalf from TPRN are Dr. Edwin Bills, Dr. Kenny Archer and Dr. Janet Hicks. Acting Interim Executive Director, Dr. Terry Cannada, advised the Board took action against Dr. Stapf's license due to chemical dependency at the January 17 - 18, 2006. Dr. Stapf stated in 2002 he was involved in an automobile accident

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and took Hydrocodone from the pharmacy. In October, 2005, Dr. Stapf sought treatment at Cornerstone. Dr. Stapf stated he made restitution to Walgreens but Pre-Trial Diversion charges are pending in McMinn County, Athens, Tennessee.

Dr. Kenny Archer stated Dr. Stapf was compliant with the recommendations of TPRN. Dr. Stapf noted he has support from his wife, children and family members. The Board **deferred the request until the resolution of the criminal charges**. Chief legal counsel, Mrs. Alison Cleaves advised Dr. Stapf that he can make an appeal in writing to counsel plus provide a copy of the court documents.

**AL EZZELL, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
CHATTANOOGA, TN**

Dr. Al Ezzell and his wife, Mrs. Liz Ezzell appeared before the Board along with TPRN advocates, Dr. Janet Hicks, and Dr. Jeff Casey, to request the reinstatement of his pharmacist license. Dr. Terry Cannada, Acting Interim Executive Director, advised Dr. Ezzell's license was indefinitely suspended at the January 17 - 18, 2006 board meeting due to being chemical dependent. Dr. Ezzell informed the Board in 2002 he was diagnosed with Neuropathy and started drinking and stealing Hydrocodone from his place of employment. Dr. Ezzell stated he sought treatment at Cornerstone in December, 2005. Dr. Jeff Casey stated Dr. Ezzell was compliant with the TPRN recommendations and is approximately twelve (12) days short until the completion of his 90/90 meetings. Dr. Ezzell stated he also attends A/A meetings. Mrs. Ezzell stated she attended sessions with her husband at Cornerstone and commented on the change in Dr. Ezzell's attitude and outlook on life. After Board discussion, Dr. Reggie Dilliard motioned:

1. Respondent does hereby agree to the reinstatement of license number **6487** with the following probationary conditions. Said probation shall remain in effect for a **period of five (5) years**, from **May 16, 2006 to May 16, 2011**.**
(May 28, 2006)

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Donald Hartsfield, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician

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each time the Respondent changes primary physicians;

- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;

II. Satisfy all past due continuing pharmaceutical education; and

III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Bettie Wilson seconded the motion. ****President Julie Frazier noted the probationary term should begin on May 28, 2006 as Dr. Al Ezzell lacks twelve (12) days on the 90/90 meetings.** All were in favor and the motion carried.

**JANICE LEWIS, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
MORRISTOWN, TN**

Dr. Janice Lewis appeared before the Board to request the reinstatement of her pharmacist license. Advocating on her behalf from TPRN were Dr. Janet Hicks, Dr. Kenny Archer and Dr. Edwin Bills. Dr. Lewis stated she felt ignored by people and suffered from depression, but always had a desire to help people. Dr. Lewis entered Cornerstone in October, 2005. Dr. Kenny Archer noted everyone shares the same concerns over depression as having a feeling of worthlessness. Dr. Archer stated Dr. Lewis is compliant with the recommendations established by TPRN. Dr. Lewis stated her parents are very supportive and would like for her to be happy. After board discussion, Dr. Betty Wilson motioned:

1. Respondent does hereby agree to the reinstatement of license number **11960** with the following probationary conditions. Said probation shall remain in effect for a **period of five (5) years**, from **May 16, 2006 to May 16, 2011**

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Kenneth Jobson, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of

treatment;

- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Sheila Mitchell seconded the motion. All were in favor and the motion carried.

**LOIS HOPPSTEIN, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
MARYVILLE, TN**

Dr. Lois Hoppstein appeared before the Board to request the reinstatement of her pharmacist license. Advocating on her behalf from the Tennessee Pharmacists Recovery Network were Dr. Edwin Bills, Dr. Kenny

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Archer and Dr. Janet Hicks. Acting Interim Executive Director, Dr. Terry Cannada stated the Board did not receive any information relative to Dr. Hoppstein's treatment at Cornerstone. Dr. Hoppstein stated she endured marital problems and after the birth of her son, and upon becoming a single parent, she started to drink in order to relax. Dr. Kenny Archer stated Dr. Hoppstein is compliant with the recommendation of TPRN. Dr. Hoppstein stated she attends AA and Caduceus meetings and her support group consists of fellow peers and family.

After board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the probation of license number **21734** with the following probationary conditions. Said probation shall remain in effect for a **period of five (5) years**, from **May 16, 2006 to May 16, 2011.**

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Peter O'Choa, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent

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does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

**TIM SIMEK, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
MARYVILLE, TN**

Dr. Tim Simek appeared before the Board along with TPRN advocates, Dr. Janet Hicks, Dr. Kenny Archer and Dr. Edwin Bills to request the reinstatement of his pharmacist license. Acting Interim Executive Director, Dr. Terry Cannada noted Dr. Simek's license was suspended by the Board at the September 20 - 21, 2005 board meeting due to relapsing. Dr. Simek stated he entered Cornerstone in June, 2005. Advocate, Dr. Edwin Bills stated Dr. Simek is compliant with the requirements of the TPRN. After Board discussion, Dr. Reggie Dilliard motioned:

1. Respondent does hereby agree to the reinstatement of license number **10781** with the following probationary conditions. Said probation shall remain in effect for a **period of ten (10) years**, from **May 16, 2006 to May 16, 2016.**

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Gary O'Shaunessey, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall

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immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Todd Bess seconded the motion. All were in favor and the motion carried.

**JAMES CATRON, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
MORRISTOWN, TN**

Dr. James Catron personally appeared before the Board to request the reinstatement of his pharmacist license. Advocates Dr. Janet Hicks, Dr. Edwin Bills and Dr. Kenny Archer with TPRN were in attendance. Dr. Terry Cannada, Acting Interim Executive Director, advised the Board in October, 2005, Dr. Catron contacted Dr. Kendall Lynch and asked for his license to be placed in inactive/retired status. After Board discussion, Dr. Todd Bess motioned:

1. Respondent does hereby agree to the reinstatement of license number **10990** with the following probationary conditions. Said probation shall remain in effect for a **period of ten (10 years, from May 16, 2006 to May 16, 2016.**

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Eustachia Pratt, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);

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- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

WAIVERS

TRICIA L. JENNEWEIN, DPH
Bergstraat 44
1560 Hoeilaart
Belgium

Acting Interim Executive Director, Dr. Terry Cannada, presented a waiver request of Rule 1140-5-.01 relevant to the fifteen (15) Live ACPE continuing education hours required for the renewal of Dr. Tricia Jennewein's

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pharmacist license. Dr. Jennewein is currently living in Belgium and does not have access to the Live ACPE CE's. Dr. Reggie Dilliard motioned to **accept** the request, seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

DEIDRA RUDDER, PHARM D

Smith Drug Store

Highway 11, West

Rutledge, TN 37861

Dr. Terry Cannada, Acting Interim Executive Director, presented a request of Rule 1140-3-.14 (12) relevant to Dr. Deidra Rudder being the designated PIC at more than one pharmacy practice site. Dr. Rudder is currently the PIC at Smith Drug Store and would like to open a compounding pharmacy approximately fifty (50) miles away. The business hours will be Tuesday, 8:00A to 5:00P and every other Thursday, as necessary. Dr. Todd Bess motioned for the inspector to verify what is being compounded for weight loss; seconded by Mrs. Monica Franklin. President Julie Frazier reiterated that the waiver request was relevant to the PIC at more than one pharmacy practice site. Dr. Todd Bess withdrew his motion. Dr. Sheila Mitchell motioned to **approve** the waiver request; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

MS. BRANDIE LEE

Director of Operations

The Diabetes Store

265 South Front

Memphis, TN 38103

Acting Interim Executive Director, Dr. Terry Cannada, presented a request from Ms. Brandie Lee of Rule 1140-3-.14 (12) to allow Dr. Patricia Wong to be the PIC at more than one pharmacy practice site. The Diabetes and Respiratory Store Pharmacy is a durable medical equipment company that specializes in diabetes testing supplies and also has a closed door pharmacy that is only open for business on an as needed basis to fill prescription orders. Dr. Wong is currently the PIC at Walgreens. Dr. Reggie Dilliard motioned to **grant** the waiver; seconded by Dr. Bettie Wilson. All were in favor and the motion carried.

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JAMIE GUNNELLS, DPH
Director of Pharmacy Services
Elderscript Services, LLC
144 S. Thomas Street #101-1
Tupelo, MS 38801

Dr. Jamie Gunnells appeared before the Board to request a review of the use of an automated dispensing machine, Med Xpress, in nursing homes in Tennessee. Dr. Gunnells noted Elderscript plans to utilize consultant pharmacists to supervise the replenishing process for the automated dispensing machines. The consultant pharmacist would actually replenish the controlled substances used in the machine and would like to be allowed to train the Director of Nurses or some other responsible nurse to perform the replenishment functions as well. The Board noted pursuant to Rule 1140-4-.15, the procedure noted does not fit within the Rule as the automated dispensing machine needs to be serviced by a pharmacist.

JENNIFER DILLIARD, DPH - CENTRAL FILL DISPENSING WITH DEA WAIVER
Walgreens Co.
Nashville, TN

Dr. Jennifer Dilliard, with Walgreens Co., appeared before the Board to discuss a central fill process for the dispensing of Oxycotin due to the increasing number of armed robberies Walgreen's has encountered. Pharmacy board member, Dr. Reggie Dilliard, asked to be recused.

Dr. Jennifer Dilliard noted the pharmacy would be a closed door pharmacy and no patient will be able to have their prescriptions filled at this location. The original prescription hard copy will be mailed to the pharmacy, the same day that it is dispensed. The prescription will be filled and dispensed prior to receiving the hard copy. Mr. Larry Lockhart with the DEA in Nashville, Tennessee stated a DEA waiver would be required for the pharmacy. Mrs. Alison Cleaves, chief legal counsel, noted these issues are addressed in the Board's new central fill rules, which are in the Attorney General's Office, and stated policies and procedures must also be in place. After board discussion, Dr. Sheila Mitchell suggested to table the matter until the Board can discuss further; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

After board discussion, Dr. Bettie Wilson motioned to **approve the process** as long as "central fill" falls within the guidelines in the Board's current rules and regulations and as long as it is approved by DEA for a waiver; seconded by Mrs. Monica Franklin. There was one (1) nay vote. The motion carried.

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MR. JESS SALZMAN
BD Medical
Diabetes Care
1 Becton Drive
Franklin Lakes, NJ 07417

Acting Interim Executive Director, Dr. Terry Cannada, presented an inquiry from Mr. Jess Salzman relevant to the State's policy on insulin syringes. Dr. Reggie Dilliard motioned **a prescription would be required in order to be reimbursed on the insurance plan and to refer Mr. Salzman to Public Chapter 434 for reference.** Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

ADJOURNMENT

President, Dr. Julie Frazier adjourned the Board of Pharmacy on Tuesday, May 16, 2006 at 5:05 p.m. CDT.

RECONVENED

The Tennessee Board of Pharmacy reconvened on Wednesday, May 17, 2006 at 9:30 a.m., CDT in Room 160 of the Davy Crockett Tower, Nashville, Tennessee. A quorum of the members being present, President Julie Frazier called the meeting to order. Dr. Reggie Dilliard was in attendance.

CANDIDATES #1, #2, #3

The Board of Pharmacy conducted three (3) interviews for the vacant Executive Director position with the Tennessee Board of Pharmacy. After the interviews were conducted, Mrs. Monica Franklin motioned to offer the Executive Director position of the Board of Pharmacy to Candidate #3; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

Dr. Sheila Mitchell motioned to set the salary for the Executive Director at \$110,000 based on a survey that was conducted by the Board. Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

The Board noted that it received applications for eight (8) candidates of which two (2) turned the position down. Of the remaining six (6) candidates, one (1) candidate did not like the direction the Board was headed; one (1) was not familiar with the Board's functions; two (2) were unsure; and two (2) were interested in the position.

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"BIRD" FLU

President, Dr. Julie Frazier met with the Governor's Office on April 10, 2006 regarding a vaccine for the "Bird Flu" epidemic. Dr. Frazier noted that no vaccine has been developed to warrant against this type of flu and it would probably be six (6) months or so before a vaccine is developed.

**BRAD BECK, DPH
HACIENDA HEIGHTS, CA**

Dr. Brad Beck personally appeared before the Board to discuss an action taken by the Board at the November 14 - 15, 2000 board meeting in regards to a complaint and to request a change in his Tennessee pharmacist license status from inactive to active. Dr. Beck noted the Nevada Board of Pharmacy had taken disciplinary action against his license for Medicaid fraud. Dr. Beck noted the felony conviction had been expunged but an OIG restriction had been placed on his license. After board discussion, Dr. Sheila Mitchell motioned to **postpone** the request, seconded by Dr. Reggie Dilliard. All were in favor and the motion carried. The Board suggested Dr. Beck apply to HHS to have the exemption lifted.

DIRECTOR'S REPORT

**MR. NEIL LAWLEY
Cherokee Health Sustem Pharmacy
501 Adesa Boulevard #A-150
Lenoir City, TN 37771**

Dr. Neil Lawley, pharmacy service coordinator with Cherokee Health System Pharmacy, submitted a request for approval for a pharmacy policy and procedure for remote access of pharmacy services. Cherokee Health Systems has several 330 CHC/FQHCLA and will have two (2) in-house 340b pharmacies. Cherokee Health Systems would like to be able to fill a prescription at one of the in-house pharmacies and deliver it to the clinic site for patient pick-up. Cherokee Health Systems will be installing register software at each facility which is connected to the pharmacy software and will have the ability to capture the patient signatures that can be retrieved at the pharmacy. The Board expressed concern with patient counseling and Rule 1140-3-.05 relevant to areas of receipt and dispensing. The Board referred the matter to Chief Legal Counsel, Mrs. Alison Cleaves for action.

**ROGER SELLS, DPH - REQUEST FOR REINSTATEMENT OF LICENSE
EADS, TN**

Dr. Roger Sells appeared before the Board along with advocates, Dr. Steve Jones and Dr. Steve Davis, to request the reinstatement of his pharmacist license. Acting Interim Executive Director, Dr. Terry Cannada, advised the Board of Dr. Sells previous disciplinary history with the Board of Pharmacy. At the November 14 - 15, 2001 board meeting, the Board took action against Dr. Sells license due to a relapse. Dr. Sells noted since June, 2004, he has been drug free. Dr. Jones stated Dr. Sells has completed the 90/90 meetings and has been on contract with TPRN for over a year. Dr. Davis noted Dr. Sells is willing to work the program. Dr. Sells stated his wife is exceptionally supportive in his recovery. After Board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number **4252** with the following probationary conditions. Said probation shall remain in effect for a **period of fifteen (15) years**, from **May 16, 2006 to May 16, 2021.**

- a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- b) Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, **Tina Burns, MD**, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- c) The Respondent shall not obtain or attempt to obtain any prescriptions in the respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the

presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- i) If the license has been inactive, delinquent, suspended or revoked:

(ii) **One (1) year to not more than five (5) consecutive years, the pharmacist shall:**

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education;
- III. Successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE);
- IV. Pay all cumulative license renewal fees and any applicable penalties;
- V. Complete a period of pharmacy internship in Tennessee.
 - A. For more than three (3) consecutive years but not more than five (5) consecutive years, three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

Mrs. Monica Franklin seconded the motion. All were in favor and the motion carried.

Tennessee Board of Pharmacy

May 16 - 17, 2006

ADJOURNMENT

Dr. Sheila Mitchell motioned to adjourn the Board of Pharmacy meeting at 2:30 p.m. CDT on Wednesday, May 17, 2006; seconded by Dr. Todd Bess. All were in favor and the motion carried.

Respectfully submitted,

Julie Frazier, President

Terry Cannada, Acting Interim
Executive Director